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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

EX PARTE

September 12, 2002

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: Written *Ex Parte* Presentation
CC Docket No. 01-321

Dear Ms. Dortch:

Attached hereto are proposed modifications to the Performance Metrics and Installation Intervals for Interstate Special Access Services submitted by the Joint Competitive Industry Group ("JCIG") on January 22, 2002. These modifications are required to clarify that DSL services, as special access, are encompassed within the JCIG proposal and that the performance measures and reporting requirements are appropriately tailored to the provisioning and maintenance of DSL services.

The JCIG proposal includes a set of measures, standards and reporting requirements applicable to the provision of all interstate special access services by Tier1/Class A incumbent local exchange carriers ("LECs"). On February 12, 2002, JCIG also submitted an enforcement plan providing remedies for poor or discriminatory provisioning and maintenance. AOL Time Warner Inc. ("AOL") addressed these proposals in a June 17, 2002 *ex parte* meeting with Commission staff. Noting that it relies on the provision of special access services, both directly and indirectly, to provide Internet access and other services to its customers, AOL expressed concerns regarding maintenance and repair problems that negatively impact its ability to serve its customers. AOL stated that the JCIG proposal represented an important and necessary step to discourage discriminatory behavior, allow easier access to essential information and facilitate much-needed transparency in the provision of special access. AOL urged the Commission to clarify that the proposal would apply to DSL services, as well. JCIG submitted a further explanation regarding the purpose and impact of its proposed metrics on June 18, 2002.

As evidenced in the Attachment, only limited modifications are required to ensure that the JCIG proposal is applicable to special access services that utilize DSL-based technology. AOL suggests specific wording changes to the JCIG proposal to encompass DSL services and,

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consistent with JCIG's June 18 submission, includes the rationale for the modification. None of the modifications pose an undue burden on the incumbent LEC.

A clear and concise set of performance measures, reporting requirements and enforcement mechanisms will serve the public interest by encouraging the delivery of efficient, reliable and competitive DSL services to consumers. AOL urges the Commission not to undermine the effectiveness of the JCIG proposal by failing to adopt industry-wide metrics or by eliminating the reporting requirements. Carrier specific metrics without reporting will prevent consumers and their ISPs from assessing the performance of the incumbent LEC in providing, maintaining and repairing services. They will be unable to anticipate potential problems and to compare the performance of incumbent LECs to ensure that service quality and reliability is consistent with industry practice. The JCIG proposal is not intended to supplant current individual tariffing and contract provisions to meet individual customer needs, rather it is intended to ensure that customers have consistent information necessary to assess performance. Further, the enforcement metrics are essential to ensure that the standards are, in fact, met. Performance standards without enforcement will become little more than empty promises.

Even in a pro-competitive, deregulatory environment, service quality and reliability must be preserved. Measures, such as the JCIG proposal as modified by AOL, to improve the ordering, provisioning and maintenance and repair of all access services will enhance the provision of high quality and reliable broadband services to the public. We urge the Commission to adopt such measures as discussed herein.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, an original and one copy of this letter are being provided for inclusion in the public record of this proceeding.

Sincerely,



Linda L. Kent

Counsel for AOL Time Warner Inc.

Attachment

cc:	Michelle Carey	Mark Stone
	Uzoma Onyeije	Behzad Ghaffari
	John Stanley	Jerome Stanshine
	Ben Childers	Cathy Zima
	Renee Crittendon	
	Daniel Shiman	
	Pamela Megna	
	Jonathan Kraushaar	

Proposed Modifications – ILEC Performance Measures and Standards CC Docket No. 01-321

Only limited modifications (as listed below) are required to clarify that DSL services, as special access, are encompassed in the ILEC Performance Measurements and Standards proposal of the Joint Competitive Industry Group ("JCIG") and ensure that the reporting measures and performance standards are appropriately tailored to DSL services. Specific wording changes are in *italics*.

I. REPORTING DIMENSIONS

Change Proposed. Add the following to the definition of special access: "...and broadband services *including access services using DSL-based technology.*"

Rationale. This change will clarify that DSL services are included in the performance measures and standards ultimately adopted. According to FCC precedent, DSL services are special access services. See, e.g. *GTE Telephone Operating Cos.; GTOC Tariff No. 1; GTOC Transmittal No. 1148, Memorandum Opinion and Order*, 13 FCC Rcd 22466 (1998); *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Order on Remand*, 15 FCC Rcd 385 at ¶ 45 (1999), *reversed and remanded on other grounds, WorldCom v. FCC*, Case No. 00-1002 (D.C. Cir. Apr. 20, 2001); *Bell Atlantic Telephone Cos., et. al.*, CC Docket Nos. 98-168, 98-161, 98-167, 98-103, *Memorandum Opinion and Order*, 13 FCC Rcd 23667, 23675 (1998). In the *Fifth Report and Order* in CC Docket No. 96-262, the FCC granted pricing flexibility for the provision of DSL services expressly because those services were special access services. *Access Charge Reform*, CC Docket No. 96-262, *Fifth Report and Order and Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999) at footnote 280.

II. FOC RECEIPT

Change Proposed. Add *DSL* to the Levels of Disaggregation and add the following Performance Standard: *DSL = > 98.0% within 1 business day*

Rationale. FOCs provide the due date when requested DSL service arrangements will be installed. Wholesale customers rely on FOCs for business planning purposes. This measure will allow such customers to know whether carriers are meeting these commitments and whether the due dates are timely. This measure is

not unduly burdensome because most ILECs voluntarily provide this information to certain competitors.

III. FOC RECEIPT PAST DUE

Change Proposed. Add *DSL* to the Levels of Disaggregation and the following Performance Standard: *DSL Percent FOC Receipt Past Due – Without Open Query/Reject 99% within 24 Hours*

Rationale. This measure will track those FOCs that are past due and will provide wholesale customers with the means to determine when ordering problems occur so that problems are quickly detected. This measure also provides customers with the opportunity to ensure that outstanding orders are at a minimal level and alert their end user customers if backlogs are developing. This measure is not unduly burdensome because the ILECs already provide electronic notification in many instances e.g., a "jeopardy notice" if the carrier discovers a facility issue that will cause a delay.

IV. OFFERED VERSUS REQUESTED DUE DATE

Change Proposed. Add the following to the Description: "...the ILEC is committing to install service on the *Wholesale Customer*, CLEC or IXC Carrier Requested Due Date..." In addition, modify the Calculation Methodology to include the following: "...Percent Offered with *Wholesale Customer*, CLEC or IXC Carrier Requested Due Date and add *DSL* to the Levels of Disaggregation.

Rationale. This measure will assist customers in discerning whether the date offered by the ILEC equates to the customer requested due date. In the provision of DSL arrangements these dates are considered to be equivalent and would be treated accordingly for DSL service arrangements. These dates are readily available to the ILEC and can be provided without undue administrative burden.

V. ON TIME PERFORMANCE TO FOC DUE DATE

Change Proposed. Modify Business Rule 3 as follows: "...as noted on a completion advice to the *Wholesale Customer*, CLEC or IXC Carrier." and add *DSL* to the Levels of Disaggregation.

Rationale. On time performance to the FOC due date is a critical business measure to ensure that services are timely and reliably provisioned. When these dates are missed, end users are not able to utilize services. This measure will alert wholesale customers to inconsistent performance as well as missed due dates. Further, the

notification provision contained in Business Rule 3 is particularly important in this regard. This information is readily available.

VI. DAYS LATE

Change Proposed. Add DSL to the Levels of Disaggregation and a new Business Rule 6 as follows: *The breakdown of delay days caused by a lack of ILEC facilities includes lack of sufficient DSLAM capacity.*

Rationale. This measure, in general, is important to ensure that delays are kept to a minimum and that past due DSL service arrangements are promptly addressed. The new business rule ensures that the breakdown includes delays caused by a lack of sufficient DSLAM capacity for DSL services. Wholesale customers need to be apprised of this information to ensure that a central office that is embargoed due to a lack of sufficient DSLAM capacity is not accepting orders or otherwise forming a queue before such capacity is available unless the queue is available on a “first in, first out” priority for all customers. This information is readily available.

VII. AVERAGE INTERVALS – REQUESTED/OFFERED INSTALLATION

Change Proposed. Add DSL to the Levels of Disaggregation and also add a new Business Rule 6 as follows: *The average installation intervals are defined as follows: The Offered Interval may not be longer than the least of: The standard interval of DSL: 5 business days, DSO: 7 business days, DS1: 7 business days, DS3: 14 business days; the interval stated by the ILEC; or, the interval actually provided to the ILEC’s affiliate or the ILEC’s retail customers in that state. Provided, however, that if the carrier/customer requests a longer interval, the requested interval shall become the offered interval.*

Rationale. This measure is increasingly important in order to ensure that ILEC provisioning does not decline and that installation intervals do not increase. The business rule incorporates the definition of average installation interval into the measure for clarification and to specify the standard interval of 5 business days for DSL. The data points for this measure exist today.

VIII. PAST DUE CIRCUITS

Proposed Change. Add DSL to the Levels of Disaggregation and the following new Business Rule 6: *The breakdown of past due circuits due to a lack of insufficient ILEC facilities includes the lack of sufficient DSLAM capacity.*

Rationale. Promptness in restoring circuits is essential to maintaining reliable customer service. Since the number of 'No Trouble Found' tickets is over 40 percent of all tickets in some instances, this measure is extremely important. This is a standard industry measure.

XII. REPEAT TROUBLE REPORT RATE

Proposed Change. Add *DSL* to the Levels of Disaggregation.

Rationale. Multiple circuit troubles or outages, particularly within a short period of time, result in significant end user customer dissatisfaction. This measure provides information on the quality of repair work performed by ILECs. This measure is standard industry practice.

XIII. GLOSSARY

Proposed Change. Add the following to the definition of Access Service Request: "*Any [delete A] request, whether submitted singly or by batch, to an ILEC...*"

Rationale. This change clarifies that an access service request is applicable to DSL.

XIV. OFFERED INSTALLATION INTERVALS

Proposed Change. Add *5 business days for DSL* as the standard interval for DSL.

Rationale. This change specifies the standard installation interval for DSL as 5 business days.

Rationale. This measure is extremely important to ensure that missed installations are promptly rescheduled. The new business rule clarifies that insufficient DSLAM capacity is included as insufficient facilities for bulk DSL customers. ILECs should not be permitted to accept orders or otherwise form queues until sufficient capacity for all customers is available unless the queue is available on a "first in, first out" priority for all customers. This information is readily available.

IX. NEW INSTALLATION TROUBLE REPORT RATE

Proposed Change. Add DSL to the Levels of Disaggregation and add the following to Business Rule 1: "...as noted on a completion advice to the *wholesale customer*, CLEC or IXC Carrier."

Rationale. This important measure would provide valuable information regarding the quality, reliability and completeness of provisioning work performed by the ILEC. This is a standard industry measurement.

X. FAILURE RATE

Proposed Change. Add a separate calculation for DSL as follows: *(Count of outstanding trouble tickets/total number of service arrangements in service at the end of the Report Period) x 100*. Add the following to Business Rule 2: "...when the ILEC issues notice to the *wholesale customer*, CLEC or IXC carrier..." Add DSL to the Levels of Disaggregation and Add a Performance Standard for DSL as follows: *Failure Rate per Reporting Period – DSL < 0.50%*.

Rationale. The new calculation will provide DSL customers with a snapshot of ILEC performance during any monthly reporting period, with emphasis on the measure of open trouble reports, and thereby enable these customers to monitor the quality and reliability of service they receive from the ILEC. The availability of monthly reports will be particularly useful for bulk DSL customers. This calculation will not increase the administrative burden on ILECs.

XI. MEAN TIME TO RESTORE

Proposed Change. Modify the description as follows: "...Calculation is the elapsed time from the *wholesale customer*, CLEC or IXC Carrier submission...and the Mean Time to Restore those troubles recorded as *No Trouble Found/Found OK/Test OK...*" Add DSL to the Level of Disaggregation for Below DS3 as follows: "Below DS 3 (DS0 + DS1 + DSL).